

ARKANSAS REGISTER

Transmittal Sheet

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Effective Date _____

Code Number _____

Name of Agency Arkansas Insurance Department

Department Legal Division

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Statutory Authority for Promulgating Rules Ark. Code Ann. 23-61-108 & Ark. Code Ann. 23-99-414

Rule Title: Prior Authorizations for Pain Medications for Terminal Illnesses

Intended Effective Date
(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published

2/19/2016

☐ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment

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☒ Other Rule (30 days after filing)
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council

6/14/2016

Adopted by State Agency

6/21/2016

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Brandy Wedsted

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2/22/2016

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Loraine Rowland
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Title

July 7, 2016

Date

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MARK MARTIN
SECRETARY OF STATE
STATE OF ARKANSAS

RULE 114
PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS
FOR TERMINAL ILLNESSES

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SECTION 1. AUTHORITY

This Rule is issued pursuant to Ark. Code Ann. § 23-99-414 which authorizes the Arkansas Insurance Commissioner ("Commissioner") to promulgate rules necessary to carry out the "Arkansas Health Care Consumer Act" subchapter. Act 992 of 2015, "An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness," adds various provisions to the prior authorization section in the "Arkansas Health Care Consumer Act" pertaining to prescription pain medication for persons with terminal illnesses. This Rule is also issued pursuant to Ark. Code Ann. § 23-61-108(a)(1) and (b)(1). The requirements in Act 992 of 2015 were not later codified in the Prior Authorization subchapter in Act 1106 of 2015, the "Prior Authorization Transparency Act." The Arkansas Insurance Department ("Department") however interprets the provisions in Act 992 of 2015 to be enforceable and valid as enacted. The Department is also promulgating the requirements in Act 992 of 2015 to clarify their application to health benefit plans as defined in this Rule, subject to requirements of this Rule.

SECTION 2. DEFINITIONS

- (1) "Covered person" means a "covered person" as defined in Ark. Code Ann. § 23-99-403(3);
- (2) "Health benefit plan" means a "health benefit plan" as defined in Ark. Code Ann. § 23-99-1103(7);
- (3) "Healthcare insurer" means a "healthcare insurer" as defined in Ark. Code Ann. § 23-99-1103(8);
- (4) "Prescription pain medication" means any medication prescribed as treatment for pain;
- (5) "Prior Authorization" means "prior authorization" as defined in Ark. Code Ann. § 23-99-1103(16).

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- (6) "Terminal illness" means an illness, a progressive disease, or an advanced disease state from which: (A) there is no expectation of recovery; and (B) death as a result of the illness or disease is reasonably expected within six (6) months; and
- (7) "Utilization review entity" means a "utilization review entity" as defined in Ark. Code Ann. § 23-99-1103(21);

SECTION 3. PAIN MEDICATION AUTHORIZATIONS

If a prescription pain medication requires a prior authorization by a healthcare insurer or utilization review entity, a prior authorization for prescription pain medication shall not be denied to a covered person with a terminal illness by a healthcare insurer or utilization review entity, however, coverage for individual prescriptions may be subject to quantity limits and FDA approval as provided in the health benefit plan and may be monitored by the utilization review entity or healthcare insurer to limit drug diversion and abuse.

SECTION 4. EFFECTIVE DATE

The effective date of this Rule shall be June 27, 2016.



ALLEN W. KERR
INSURANCE COMMISSIONER

6-21-16
DATE

SUMMARY

AID PROPOSED RULE 114: PRIOR AUTHORIZATIONS FOR PAIN MEDICATIONS FOR TERMINAL ILLNESSES

- The proposed rule is needed to clarify Act 992 of 2015, “An Act to Regulate the Prior Authorization Procedure for Treatment of a Terminal Illness.” The rule is needed to explain that the intent of the Act above was not to permit a person to receive an unlimited amount of pain medication in prescription coverage for persons with terminal illnesses without being subject to plan quantity limits or medical safety monitoring.
- The sponsor agreed to this restriction however an amendment was not allowed to timely be added before expiration of the last regular legislative session, and the objective was that the Insurance Department could promulgate a rule describing this restriction as outlined in Section Three (3) of the proposed rule.
- An insurer and sponsoring Senator have now requested this Rule to AID. We have sent this draft proposed to the Sponsor of Act 992 of 2015, Senator Irvin, who reviewed and has agreed or approved as to the currently proposed language. AID also agrees that the clarification makes the law more consistent with health plan prescription coverage which may have quantitative limits as well as FDA required approval. The proposed rule is therefore needed to be consistent with what’s already restricted in health plan coverage and medical safety or utilization.